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## Notice of Intended Regulatory Action (NOIRA) Agency Background Document

<b>Agency name</b>	Department of Medical Assistance Services
<b>Virginia Administrative Code (VAC) citation</b>	12 VAC 30, Chapters 10 and 20
<b>Regulation title</b>	State Plan Under Title XIX of the Social Security Act: Medical Assistance Program, General Provisions and Administration of Medical Assistance Services
<b>Action title</b>	Estate Recovery Update
<b>Date this document prepared</b>	

This information is required for executive branch review and the Virginia Registrar of Regulations, pursuant to the Virginia Administrative Process Act (APA), Executive Orders 36 (2006) and 58 (1999), and the *Virginia Register Form, Style, and Procedure Manual*.

### Purpose

*Please describe the subject matter and intent of the planned regulatory action. Also include a brief explanation of the need for and the goals of the new or amended regulation.*

The purpose of this action is to update and clarify the regulations regarding Medicaid Estate Recovery carried out by the Department of Medical Assistance Services (DMAS).

### Legal basis

*Please identify the state and/or federal legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly chapter number(s), if applicable, and (2) promulgating entity, i.e., agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.*

The *Code of Virginia* (1950) as amended, 32.1-325, grants to the Board of Medical Assistance Services the authority to administer and amend the Plan for Medical Assistance. The Code of Virginia (1950) as amended, § 32.1-324, authorizes the Director of DMAS to administer and amend the Plan for Medical Assistance according to the Board's requirements. The Medicaid authority as established by §1902 (a) of the *Social Security Act* [42 U.S.C. 1396a] provides governing authority for payments for services.

The Medicaid Estate Recovery program was mandated by the federal Omnibus Budget Reconciliation Act of 1993, as codified at 42 U.S.C. § 1396p(b)(1)(B) of the *Social Security Act* [42 USC 1396p], which requires the Commonwealth to seek adjustment or recovery from certain beneficiaries' estates. Section 32.1-326.1 of the Code of Virginia directs DMAS to comply with the federal requirements and operate a Medicaid estate recovery program.

### Need

*Please detail the specific reasons why the agency has determined that the proposed regulatory action is essential to protect the health, safety, or welfare of citizens. In addition, delineate any potential issues that may need to be addressed as the regulation is developed.*

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Several aspects of the regulations regarding Medicaid Estate Recovery are in need of updating and clarification. This action will clarify ambiguous language and bring the language of the Estate Recovery regulations up to date.

### Substance

*Please detail any changes that will be proposed. For new regulations, include a summary of the proposed regulatory action. Where provisions of an existing regulation are being amended, explain how the existing regulation will be changed.*

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DMAS intends to update the language of the Estate Recovery regulations to more closely reflect current Agency practice based upon language provided by the federal Medicaid agency, the Centers for Medicare and Medicaid Services (CMS). Specifically, the Agency intends to delete the definitions for “Estate” and “Applicable medical assistance payments,” and to move these two definitions into a new regulation section, 12 VAC 30-20-141.

The Agency also intends to repeal 12 VAC 30-20-140 (Estate Recoveries) in order to re-promulgate this section in a restructured and revised format as 12 VAC 30-20-141. The Agency intends to revise several of the definitions included in the section and to add two new definitions, for “Cost effective” and “Homestead of modest value.” Finally, DMAS intends to augment the language in this section to add greater detail to enhance understanding about the Medicaid Estate Recovery process.

### Alternatives

*Please describe all viable alternatives to the proposed regulatory action that have been or will be considered to meet the essential purpose of the action. Also, please describe the process by which the agency has considered or will consider other alternatives for achieving the need in the most cost-effective manner.*

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At present DMAS is considering only modest changes to the Estate Recovery regulations. The Agency focused on what it considers the key elements of these regulations and to address

concerns raised within the Agency. DMAS intends to receive and consider any public comments on this area of the Medicaid program and shall tailor its efforts in drafting the subsequent proposed regulations to address any public concerns that are voiced during the comment period.

### Public participation

*Please indicate the agency is seeking comments on the intended regulatory action, to include ideas to assist the agency in the development of the proposal and the costs and benefits of the alternatives stated in this notice or other alternatives. Also, indicate whether a public hearing is to be held to receive comments on this notice.*

The agency is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, recordkeeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written comments may do so by mail, email or fax to Kathy Colley, Department of Medical Assistance Services, 600 East Broad Street, Suite 1300, Richmond, Virginia 23219, (804) 786-3839; (804) 786-1680 (fax), e-mail address: Kathy.Colley@dmas.virginia.gov. Written comments must include the name and address of the commenter. In order to be considered comments must be received by the last day of the public comment period.

In addition, the agency is seeking information on (1) the continued need for the regulation; (2) the complexity of the regulation; (3) the extent to the which the regulation overlaps, duplicates, or conflicts with federal or state law or regulation; and (4) the length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation. }

A public hearing will not be held.

### Participatory approach

*Please indicate, to the extent known, if advisers (e.g., ad hoc advisory committees, technical advisory committees) will be involved in the development of the proposed regulation. Indicate that 1) the agency is not using the participatory approach in the development of the proposal because the agency has authorized proceeding without using the participatory approach; 2) the agency is using the participatory approach in the development of the proposal; or 3) the agency is inviting comment on whether to use the participatory approach to assist the agency in the development of a proposal.*

The Agency is seeking comments on the intended regulatory action, including but not limited to 1) ideas to assist in the development of a proposal, 2) the costs and benefits of the alternatives stated in this background document or other alternatives and 3) potential impacts of the regulation. The Agency is also seeking information on impacts on small businesses as defined in § 2.2-4007.1 of the Code of Virginia. Information may include 1) projected reporting, record keeping and other administrative costs, 2) probable effect of the regulation on affected small businesses, and 3) description of less intrusive or costly alternative methods of achieving the purpose of the regulation.

Anyone wishing to submit written public comments may do so by mail, email or fax to:

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### Family impact

*Assess the potential impact of the proposed regulatory action on the institution of the family and family stability including to what extent the regulatory action will: 1) strengthen or erode the authority and rights of parents in the education, nurturing, and supervision of their children; 2) encourage or discourage economic self-sufficiency, self-pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents; 3) strengthen or erode the marital commitment; and 4) increase or decrease disposable family income.*

These changes do not strengthen or erode the authority or rights of parents in the education, nurturing, and supervision of their children; or encourage or discourage economic self-sufficiency, self pride, and the assumption of responsibility for oneself, one's spouse, and one's children and/or elderly parents. It does not strengthen or erode the marital commitment and is not expected to affect disposable family income.